including any Right-of-Way occupancy fee provisions." (Petition, p. 15.) Chibardun is wrong in its suggestion that this provision requires Chibardun to "give up its right to oppose, appeal and/or seek preemption of" the License Agreement terms. (Id.)

It is entirely reasonable for a municipality to require that a rights-of-way user abide by all existing and future local regulations. Section 15 seeks to obtain the user's agreement to that effect. It should go without saying that in the event any provision of the License Agreement or a future ROW Ordinance was ever invalidated by a court or agency with jurisdiction, that provision would not be enforceable against Chibardun. Section 15 did not seek to preclude Chibardun from challenging the validity of the future ROW Ordinance.

Section 9 -- Filing of Construction Plans/List of Contractors. Chibardun next challenges Section 9 to the extent that it requires the filing of present construction plans (for projects planned during the coming calendar year) and future construction plans (for projects contemplated for the following three years) and the filing of a list of independent contractors to be used during construction. (Petition, pp. 15-16.) Construction plans are required for coordination and planning purposes. (Affidavit of Curtis Snyder, ¶15.) The City's Superintendent of Streets has a duty to coordinate rights-of-way construction projects with concurrent uses of the rights-of-way, with the City's own construction operations and with any other public activity that could impact or be affected by a particular entity's construction plans. The Superintendent also has a duty to plan for future rights-of-way uses. These objectives cannot be achieved without construction plans. Moreover, submitting a list of independent contractors who will be working for the company in the City's rights-of-way is

a typical and reasonable rights-of-way management practice. By knowing in advance the names of the contractors that will be working in public rights-of-way, the City can assess the nature of the contractor's past construction practices and determine what measures may be necessary to protect the safety and welfare of the public.

As the Commission recognized in City of Troy:

> [l]ocal governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of way.

(City of Troy, ¶103.) The Commission also delineated in City of Troy some specific activities that fall within the sphere of appropriate rights-of-way management, including the "coordination of construction schedules . . . and keeping track of the various systems using the rights-of-way to prevent interference between them." (Id.) The provisions of Section 9 that Chibardun complains of are squarely within these rights-of-way management activities and within the City's authority as recognized by the Commission.

Section 14 -- Reimbursement for Costs. Chibardun challenges that part of Section 14 which provides that "upon demand, Grantee shall reimburse City for any and all costs City incurs for review, inspection or supervision of Grantee's activities undertaken pursuant to this Agreement or any ordinances relating to such activities for which a permit fee is not established." (Petition, p. 16.) This is not the open ended provision that Chibardun attempts to portray it as. By this provision, the City could recover only costs it might occur in

regulating Chibardun's rights-of-way activities for which no permit fee is established. (See License Agreement, p. 8, Section 14.) Moreover, it was the City's intent that any amounts paid to the City under the License Agreement would be credited against occupancy fees, if any, imposed under the future ROW Ordinance. (Affidavit of Curtis Snyder, ¶15.) The reimbursement provisions of Section 14 are fully consistent with the City's authority under Section 253(c) to seek compensation for rights-of-way use, and Chibardun presents no evidence that such compensation would have been unreasonable or in any way a material inhibition on its ability to enter the Rice Lake telecommunications market.

Section 19 -- Indemnification. Chibardun suggests, with no evidentiary support, that the indemnification provisions of Section 19 are unreasonable. (Petition, p. 16.) The company is wrong. As the Commission recognized in City of Troy, indemnification requirements are well within a local government's rights-of-way management authority. (City of Troy, ¶103.) Moreover, the indemnification provision the City proposed for covered matters caused or contributed to by the negligence of City is quite standard, for example, in real estate contracts. Chibardun presents no evidence that the City exercised its authority to seek indemnification in any way that prohibited or materially inhibited the company's entry into the Rice Lake market.

Section 12 -- Relocation. Chibardun grossly mischaracterizes Section 12. (Petition, p. 17.) That section does not allow the City to order relocations at its whimsy. Rather, relocation can only be required "by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and

improvement of existing Rights-of-Way, street vacations, highway construction, change or establishment of street grade, or the construction of any public improvement or structure by City or any governmental agency." All the reasons listed for relocation are legitimate and consonant with the City's need and authority to manage its rights-of-way. (See City of Troy, at ¶103) (local governments must be allowed to perform tasks to preserve the physical integrity of streets and highways and to control the orderly flow of vehicles and pedestrians).)

Section 13 -- Use of Poles, Conduits, and Other Structures. Chibardun grossly mischaracterizes Section 13 as well. This provision would not give the City "unlimited free use" of its poles, conduits and other structures, as Chibardun maintains. (Petition, p. 17.) Rather, Section 13 provides that the City will have the right to use such facilities only where the Grantee (i.e., Chibardun), determines that there is surplus space for such use. This is a form of in-kind compensation that is fair and reasonable and consistent with Section 253(c). Chibardun presents no evidence to the contrary.

b. The Interim Ordinance does not prohibit or materially inhibit entry.

Chibardun's attack on the Interim Ordinance is based on a patently false reading of the ordinance and an unsupportable attempt to convince the Commission that the ordinance is targeted solely at Chibardun's proposed network.[23] (See Petition, p. 17.) Section 2 of the

[23] Chibardun does not challenge any of the specific provisions contained in the Interim Ordinance. Chibardun's sole contention is based on its unsupportable claim that the (continued...)

Interim Ordinance provides that "no person may construct, install, remove, or relocate any equipment or facilities, with a project value of $50,000 or more" in the City's rights-of-way "without the prior approval of the City Council or its designee, the Superintendent of Streets." (Interim Ordinance, Sec. 2, Exhibit G to Petition) (emphasis added).) So that existing utility services (water, sewer, gas, electric, telephone, etc.) and cable television service are not disrupted, the ordinance specifically exempts the repair and maintenance activities of existing rights-of-way users. Thus, on the face of the Interim Ordinance, it is clear that the ordinance covers all right-of-way construction projects valued at $50,000 or more by any and all rights-of-way users. That includes GTE North, Marcus Cable, and the Rice Lake Municipal Utilities, among others. There is no support for Chibardun's claim that the Interim Ordinance is directed solely at its proposed network or only at new entrants to the City's rights-of-way.

Nor is there support for any argument that the City will apply or has applied the Interim Ordinance only to new entrants. To the contrary, the City recently applied the Interim Ordinance to the incumbent cable television provider, Marcus Cable. As shown in Section C of the Factual Background above (pp. 22-23), the City is currently processing, under the Interim Ordinance, the excavation permit applications that Marcus Cable submitted on October 27, 1997, indicating that it will be undertaking a large (greater than $50,000) cable television construction project. Pursuant to the Interim Ordinance, Marcus Cable's

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[23](...continued)
ordinance applies only to it and other new entrants. As shown above, Chibardun is wrong.

request for excavation permits went before the Common Council on November 11, 1997. The Council voted to grant the permit applications, subject to Marcus Cable negotiating a permit agreement with the City. The agreement the City has proposed to Marcus was, in large part, identical to the one the City proposed to Chibardun. Thus, contrary to Chibardun's claim, the City has applied the Interim Ordinance to incumbent as well as new entrant providers.

c. The future ROW Ordinance does not prohibit or materially inhibit entry.

Not surprisingly, Chibardun has even less to say about the ROW Ordinance, except to suggest that it might possibly prevent Chibardun's entry at some future date. (Petition, p. 18.) It is impossible for the City to attempt to defend an ordinance that does not yet exist. Likewise, it is impossible for the Commission to preempt a non-existent regulation. Chibardun has put forth no evidence of a violation of Section 253(a).

III. CHIBARDUN FAILS TO SHOW THAT THE CITY'S ACTIONS ARE NOT WITHIN SECTION 253(c)'S SAFE HARBOR.

A. Section 253(c) Preserves Rights-of-Way Management and Compensation Authority.

While Section 253(a) generally precludes prohibitions on new competitive entry into a local telecommunications market, subsection (c) makes clear that cities retain authority to manage public rights-of-way and to require fair and reasonable compensation from telecommunications providers for use of the rights-of-way. (See City of Troy, ¶103 ("We

recognize that Section 253(c) preserves the authority of state and local governments to manage public rights-of-way").) Section 253(c) provides:

> Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(47 U.S.C. §253(c).) Like subsection (b), which the Commission has already determined is an exception to the Section 253(a) proscription,[24] subsection (c) provides a safe harbor under which state and local governments may act in order to manage or seek compensation for rights-of-way use in a non-discriminatory and competitively neutral manner. Thus, even if the Commission finds that the City's actions prohibited Chibardun's entry into the Rice Lake market in violation of Section 253(a), Chibardun cannot ultimately prevail unless it also shows that the City's actions do not fall within the Section 253(c) exception. (See City of Troy, ¶101) (Parties seeking preemption must provide "credible and probative evidence that the challenged requirement falls within the proscription of Section 253(a) without meeting the requirements of Section 253(b) and/or (c)" (emphasis added).)

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[24] In In the Matter of Silver Star Telephone Company, Inc., FCC 97-336 (released September 24, 1997), the Commission described the relationship between Sections 253(a) and 253(b). The Commission classified Section 253(b) as an "exception" to Section 253(a)'s proscription and made clear that even if a challenged action violates Section 253(a), the action is not preemptable if it satisfies the provisions of Section 253(b). (Id. at ¶37.) (See also Texas PUC, ¶¶42-44 (rejecting arguments that the Commission must preempt action that violates 253(a) even if it comes within the scope of 253(b).)

Chibardun apparently concedes that the City actions it challenges are all rights-of-way management and compensation matters. (Petition, pp. 19-21.) As set forth in Section I(A) above (pp. 24-29), the Commission does not have authority under Section 253(d) to preempt such matters. Rather, disputes falling within Section 253(c) are left to the courts to decide. While the City believes this is so and the Commission has yet to address this issue, the City will nonetheless, set forth its response to Chibardun's Section 253(c) claims below.

B. The City's Actions Were Well Within the Scope of Its Rights-of-Way Management and Compensation Authority.

Relying on dicta in City of Troy, Chibardun claims that the City attempted "to impose a redundant 'third tier' of telecommunications regulation on top of traditional federal and state regulation." (Petition, pp. 19-20.) According to Chibardun, the City's "attempts" in this regard involved (1) seeking information about Chibardun and its proposed operations within Rice Lake and (2) proposing a provision in the License Agreement that Chibardun claims requires prior written approval from the City before Chibardun may sell its telecommunications facilities to another provider. (Petition, p 20.) Neither of these actions constitute the impermissible "third tier" of regulation that the Commission referred to in City of Troy.

When the Commission cautioned local governments in City of Troy against imposing "third tier" regulations, it specified that it meant regulations "which aspire[] to govern the relationships among telecommunications providers, or the rates, terms and conditions under which telecommunication service is offered to the public." (City of Troy, ¶105.) The

Commission referred to examples of such regulations, which included requiring interconnection with other providers to facilitate universal service, regulating the fees charged for interconnection and requiring "most favored nation" treatment. (Id.)[25] Thus, while the Commission confirmed that regulations "within the scope of permissible local rights-of-way management authority or other traditional municipal concerns" remained within local government authority, it said that it may closely scrutinize attempts to regulate either the relationships among providers or the terms and conditions under which a provider offers its service to the public. (Id.) In the present case, no "close scrutiny" is necessary, as the City has not attempted to impose any "third tier" of regulation.

1. Requesting information is not "third tier" regulation.

Chibardun fails to show how the City's request for information constituted an imposition of "third tier" regulation. Instead, the company appears to have confused the City's request for information with an attempt to regulate in areas that it claims are reserved to the state and this Commission.

In asking for the information set forth in its May 23, 1997 letter (Exhibit C to the Petition), the City was not attempting to control what telecommunications services Chibardun would provide. Nor was it trying to define Chibardun's operating territory, regulate its rates, require it to obtain certification from the PSC or require it to negotiate an interconnection agreement with GTE. Rather, the City sought information about these

[25] The Commission did not say that such regulations were necessarily objectionable, only that they would be difficult to justify under Section 253(c). (City of Troy, ¶105.)

matters so that it could learn who Chibardun was, what activities the company had planned and whether the company had obtained the requisite PSC certification and interconnection authority to enable it to actually make use of the rights-of-way. (Affidavit of Curtis Snyder, ¶13.) A basic function of rights-of-way management is determining who is using the rights-of-way and whether the propsective user has the appropriate authority to provide the proposed services. If such authority is lacking, there would be no reason for the City to allow disruption of its rights-of-way for construction of an unauthorized facility. It would be entirely unreasonable to expect the City to issue excavation permits without information about the permitee's ability to provide the services it proposed. Accordingly, the City's information request was well within the scope of permissible rights-or-way management as described in City of Troy. (See City of Troy, ¶105.)

In addition, Chibardun ignores the fact that the City did not condition its grant of excavation permits on receipt of the information it requested. The City asked for the information in its May 23, 1997 letter "[t]o aid the City in the development of [a license agreement]." (See May 23, 1997 letter to Chibardun, p. 2, Exhibit C to the Petition.) Even though Chibardun never supplied the information, the City proceeded to develop the proposed License Agreement without it and never pursued the matter further. Thus, the City was prepared to move forward even though Chibardun refused to respond to the City's inquiry.[26]

[26] Chibardun could have responded to the City's information request as to matters it (continued...)

2. Section 17 of the proposed License Agreement is not "third tier" regulation.

With respect to Chibardun's challenge to Section 17 of the proposed License Agreement, the company neither explains nor supports its claim that the transfer approval provision exceeds the scope of the City's regulatory authority. Nor could Chibardun support such a claim. As reflected in the proposed License Agreement, Section 17 requires removal of the grantee's facilities on termination of the grantee's license (i.e., the agreement). The section provides an exception, however, and does not require removal where the grantee transfers its facilities to another provider and such transfer has been approved by the City. The purpose of requiring City approval for the transfer of facilities is so that the City will know what entity is occupying its public rights-of-way and who has assumed the grantee's rights and responsibilities under the City's regulations. This requirement does not regulate either the relationship between Chibardun and other service providers or the conditions under which Chibardun provides its service to the public. Ascertaining who is utilizing the public rights-of-way is well within the City's management authority. It certainly does not rise to the level of some impermissible "third tier" of regulation described in City of Troy.

[26](...continued)
did not object to. Instead, Chibardun chose not to respond at all. As with many of Chibardun's actions, this refusal to provide even basic information raises significant questions as to Chibardun's good faith and reasonable pursuit of the excavation permits.

C. The City's Actions Were Non-discriminatory and Competitively Neutral.

Chibardun tries to show a violation of Section 253(c) by claiming that the City imposed the Interim Ordinance only on new entrants and imposed more onerous and expensive obligations upon Chibardun than on GTE or Marcus Cable. (Petition, pp. 20-21.) Chibardun's claims are blatantly wrong. As shown below, the City has acted in a non-discriminatory and competitively neutral manner.

1. The Interim Ordinance applies to all telecommunications providers and all other rights-of-way users in Rice Lake.

In the first instance, Chibardun is flatly wrong in its allegation that the Interim Ordinance applies only at new entrants and not to GTE or Marcus Cable. (Petition, p. 21.) As shown above, the Interim Ordinance on its face applies to all rights-of-way users -- including GTE and Marcus Cable. The Interim Ordinance requires GTE, Marcus Cable and any other rights-of-way user to get Common Council approval for excavation permits sought for projects valued at $50,000 or more. (Interim Ordinance, Sec. 2, Exhibit G to the Petition.) The Interim Ordinance does not discriminate in who it applies to.

Furthermore, the City has not applied the Interim Ordinance in a discriminatory manner. To the contrary, the City has just recently been provided with permit requests by Marcus Cable that meet the $50,000 threshold and thereby trigger the Interim Ordinance provisions. Accordingly, the City has applied the Interim Ordinance to Marcus Cable. As shown above (pp. 22-23), Marcus Cable's permit applications went before the Common Council on November 11, 1997. The applications were approved, subject to Marcus Cable

entering into a permit agreement with the City which contained nearly identical terms as the proposed License Agreement the City provided to Chibardun. The agreement proposed to Marcus Cable was modified from the proposed Chibardun agreement only to take into account of the terms of Marcus Cable's cable television franchise. Thus, under its interim regulatory scheme, the City has not, and has no intention of, treating new entrants in a discriminatory and competitively biased manner.

2. The proposed License Agreement terms are non-discriminatory and competitively neutral.

With respect to discrimination Chibardun alleges in the terms of the proposed License Agreement, Chibardun seems to suggest that the City was not entitled to ever change its rights-of-way regulations to account for an increased demand for use of its rights-of-way resulting from the procompetitive polices contained in the Act. The crux of Chibardun's claim is that the City could not seek a license agreement from Chibardun because the City had not sought such agreements in responding to excavation permit applications in the past.[27] This is an improper and detrimental policy that the Commission should not condone.

As Chibardun would have it, the manner in which a municipality has managed and received compensation for use of its rights-of-way in the past is locked in stone. If this were true, a municipality could never adopt new ordinances or change its rights-of-way management practices without running afoul of Sections 253(a) and (c). Certainly, there is

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[27] Chibardun does not challenge the City's state law authority to seek such agreements. Rather, it challenges the City's right to seek such an agreement for the first time from a new entrant.

nothing in Section 253 that precludes a city from exercising its rights-of-way management and compensation authority to adapt to an increased demand for use of its rights-of-way by adopting new, non-discriminatory and competitively neutral management and compensation practices that apply to all providers on a going forward basis.

In an effort to adapt to such increased demand and usage, the City determined that it needed to adjust its rights-of-way management practices on a going forward basis and apply those new practices to all right-of-way users. Specifically, when the City received Chibardun's permit applications, it recognized that its existing rights-of-way regulations were inadequate to meet an increased demand for use of local rights-of-way. Consequently, the City decided to develop a comprehensive right-of-way ordinance (referred to above as the "ROW Ordinance") that would apply to all rights-of-way users. In an effort to prevent delay while the ROW Ordinance was being developed, the City developed an Interim Ordinance and also offered Chibardun, and more recently Marcus Cable, the opportunity to enter into agreements that would authorize their excavation and construction activities. The agreements and the Interim Ordinance are interim measures to allow permit applicants to go forward with their proposed projects while at the same time allowing the City to implement what it anticipates will be the central elements of its future ROW Ordinance, such as registration and reporting requirements, restrictions on the location of facilities in the rights-of-way, and insurance and indemnification requirements.

The Commission should not, as Chibardun insists, compare the City's new practices with what the City did in the past. Rather, the Commission should determine whether, on a

going forward basis, the City's regulatory measures are non-discriminatory and competitively neutral under Section 253(c). The Sprint Spectrum decision supports this approach. In Sprint Spectrum, the plaintiff raised the same claim that Chibardun raises here -- that the City's application of new rules to address its management duties in the post-Act competitive regime constituted discrimination between new entrants and existing providers. (Sprint Spectrum, 924 F. Supp. at 1040.) The court rejected Sprint Spectrum's argument, stating:

> [N]o discrimination has been shown. Sprint and others seek to enter the Washington market more than ten years after other wireless communications companies began business there. [The City] would consider any new applications by the earlier arrivals under the same rules governing newcomers' applications. Whatever [the City] does, it could not now place Sprint in the same position as that of the earlier entrants. All it can do is treat the would-be service providers without discrimination; given the recent dramatic changes in the law and the market, its generally-applicable moratorium is consistent with that request.

(Id. at 1040) (emphasis added).) The same is true in this case. Since the proposed terms of the License Agreement, the Interim Ordinance and any future ROW Ordinances will apply to all providers on a forward looking basis, there has been no discrimination.

To confirm this, one need only compare the terms of the proposed License Agreement to the terms of the permit agreement offered to Marcus Cable. Chibardun challenges eight specific provisions of the proposed License Agreement, claiming they are competitively biased and discriminatory because they are more onerous than terms that had applied to GTE and Marcus Cable in the past. (Petition, pp. 21-22.) This is wrong.

The City set forth the same provisions that Chibardun challenges in the agreement it offered Marcus Cable. The Marcus Cable permit agreement requires submission of construction plans and independent contractor lists. (Compare License Agreement, Secs. 9(a) and 9(b), with Marcus Cable permit agreement, Secs. 7(a) and 7(b), Exhibit 4 to the Snyder Affidavit.) The Marcus Cable agreement also contains relocation and removal requirements. (Compare License Agreement, Sec. 12, with Marcus Cable permit agreement, Sec. 10.) The Marcus Cable agreement sets out the City's right to use poles, conduits and other structures. (Compare License Agreement, Sec. 13, with Marcus Cable permit agreement, Sec. 11.) The Marcus Cable agreement contains the same administrative fee provision. (Compare License Agreement, Sec. 14, with Marcus Cable permit agreement, Sec. 12.) The Marcus Cable agreement contains the provision regarding compliance with the future ROW Ordinance. (Compare License Agreement, Sec. 15, with Marcus Cable permit agreement, Sec. 13.) The Marcus Cable agreement contains the $50,000 letter of credit provision Chibardun complains of. (Compare License Agreement, Sec. 18, with Marcus Cable permit agreement, Sec. 16.) The Marcus Cable provision also contains identical indemnification terms and insurance requirements. (Compare License Agreement, Secs. 19 and 20, with Marcus Cable permit agreement, Secs. 17 and 18.)

Since all of the provisions that Chibardun complains of and alleges are discriminatory and competitively biased have been proposed to Marcus Cable, there is no validity to Chibardun's claim that it was treated unfairly. There has been no discrimination.

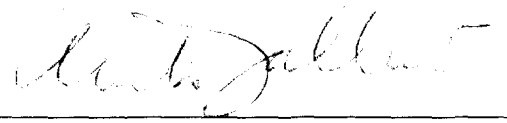
CONCLUSION

The Commission should dismiss or deny the Petition because it raises issues under Section 253(c) that are beyond the scope of the Commission's jurisdiction. Even if the Commission has authority to address Chibardun's Section 253(c) claims, the issues are not ripe for Commission review and Chibardun lacks standing to raise the issues. Moreover, Chibardun fails to demonstrate that it is entitled to preemption relief under Section 253(d). Although the company paints an incomplete and inaccurate picture of what took place, the facts reveal that the City welcomed telecommunications competition and sought to facilitate Chibardun's entry into the Rice Lake market. The fact that the City also had a duty to manage the public rights-of-way and sought to fulfill that duty by applying basic regulatory requirements to Chibardun and all other telecommunications providers does not alter this. The City has not prohibited any entry into its telecommunications market and has not discriminated against Chibardun.

For all of the reasons set forth above, the City of Rice Lake respectfully requests that the Commission dismiss or deny Chibardun's Petition.

Submitted this 2nd day of December, 1997.

BOARDMAN, SUHR, CURRY & FIELD
By



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CERTIFICATE OF SERVICE

I, Janis Murray, an employee in the law firm of Boardman, Suhr, Curry & Field, hereby certify that on this 2nd day of December, 1997, I sent by Federal Express or first-class mail (as indicated below), the foregoing "City of Rice Lake's Comments On Petition And Motion To Dismiss Or Deny" and "City of Rice Lake's Attachments to Comments On Petition And Motion To Dismiss Or Deny" to the following individuals:

By Federal Express

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1919 M Street, N.W.
Washington, D.C. 20554

Janice M. Myles
Claudia Pabo
Common Carrier Bureau
Federal Communications Commission
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Janis Murray

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of	)	
	)	
CHIBARDUN TELEPHONE COOPERATIVE, INC.	)	
CTC TELCOM, INC.	)	
	)	CC Docket No. 97-219
Petition for Preemption Pursuant to	)	
Section 253 of the Communications Act --	)	
City of Rice Lake, Wisconsin	)	

TO: The Commission

CITY OF RICE LAKE'S ATTACHMENTS TO COMMENTS ON PETITION AND MOTION TO DISMISS OR DENY

BOARDMAN, SUHR, CURRY & FIELD

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December 2, 1997

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of	)	
	)	
CHIBARDUN TELEPHONE COOPERATIVE, INC.)		
CTC TELCOM, INC.	)	
	)	CC Docket No. 97-219
Petition for Preemption Pursuant to	)	
Section 253 of the Communications Act --	)	
City of Rice Lake, Wisconsin	)	

TO: The Commission

AFFIDAVIT OF CURTIS SNYDER

STATE OF WISCONSIN)
) ss.
COUNTY OF BARRON)

Curtis Snyder, being first duly sworn, on oath deposes and states:

1. I am the City Administrator for the City of Rice Lake, which is located in Barron County, Wisconsin (the "City"), and have served in that capacity since May 1, 1991. In my capacity as City Administrator for the City, I obtained personal knowledge of the matters set forth herein.

2. The City is a small community of approximately 8,000 residents, and is located in Barron County in a relatively rural area of northwest Wisconsin. The City and its residents currently receive local telephone service from GTE North, Inc. and cable television service from Marcus Cable Partners, L.P. ("Marcus Cable").

3. The City recognizes that the emergence of competition within the telecommunications industry, in the manner Congress provided for in the Telecommunications Act of 1996, can provide significant benefit to telecommunications customers. The City therefore has had, and continues to have, a strong interest in promoting such competition within the City so that its residents may be afforded the resultant benefits. To that end, the City has welcomed, and continues to welcome, the opening of its telecommunications market to competition in the manner provided for in the Telecommunications Act of 1996.

4. In addition to its interests in promoting competition in its telecommunications market, the City also owes a duty to its residents to properly manage local rights-of-way, thereby protecting their general welfare and ensuring that the Rice Lake community operates in a safe and efficient manner.

5. In the past, when there were few entities, and only one telecommunications provider, seeking use of City rights-of-way, the City relied upon the provision of Title 6, Chapter 2 of the Rice Lake Municipal Code of Ordinances to fulfill its rights-of-way management duty. During those times when rights-of-way users were relatively few, the City did not see a need for regulatory provisions more specific or comprehensive than those set out in Title 6, Chapter 2, for it to fulfill its rights-of-way management duties.

6. When new potential rights-of-way users came to the City, with the opening of competition in the telecommunications industry, it became apparent to the City that Title 6, Chapter 2, may no longer be sufficient to address rights-of-way use by several occupants. Sufficiency of the authority provided by Title 6, Chapter 2, for the City to adequately manage rights-of-way use specifically came into question when Chibardun Telephone Cooperative,

Inc. and its affiliates (collectively, "Chibardun") approached the City and announced plans to build a telecommunications network in the City for purposes of providing telephone and cable television service. When Chibardun announced its plans, the City recognized the need to assess the adequacy of Title 6, Chapter 2, to address issues related to increased demand to use the City's rights-of-way. Thereafter, the City promptly began that assessment and is currently in the process of reviewing and revising its ordinances to identify specific terms and conditions that will need to apply to current and future uses of City rights-of-way so that the City can continue to fulfill its rights-of-way management duties.

7. In addition to Title 6, Chapter 2, the City also has in place, and implements, Title 9, Chapter 4 (Ordinance No. 647) of the Rice Lake Municipal Code of Ordinances, which sets forth the terms and conditions of Marcus Cable's cable television franchise with the City.

8. Attached hereto as Exhibit 1 is a true and correct copy of Cable TV Ordinance No. 647, which is the cable franchise ordinance contained in Title 9, Chapter 4.

9. In April of 1997, when Chibardun announced its plans to the Rice Lake Cable Commission to construct a telecommunications network for providing telecommunications and cable television services, the company sought to negotiate the terms of a Chibardun cable franchise with the City. Chibardun refused to accept a franchise on the terms set forth in Ordinance No. 647, but instead, wanted terms more favorable than those that applied to Marcus Cable under that franchise ordinance.

10. In May of 1997, I received from Chibardun's General Manager, Mr. Rick Vergin, a letter dated May 2, 1997, which contained an "official request" for a cable television franchise. Attached hereto as Exhibit 2 is a true and correct copy of the May 2,

1997 letter I received from Mr. Vergin.

11. In response to Mr. Vergin's May 2, 1997 letter, on May 23, 1997, I wrote to Mr. Vergin explaining, among other things, the City's need for additional information before it could act on Chibardun's request. As an attachment to that May 23, 1997 letter, I provided Mr. Vergin with a specific list of information the City needed before it could evaluate the request. As of the date of this Affidavit, Chibardun has never provided the requested information.

12. In my May 23, 1997 letter to Mr. Vergin, I also responded to several permit applications that Chibardun had filed with the City on May 20, 1997. I explained in my response that the City was reviewing those permit applications. I also explained that the City was planning to develop a telecommunications ordinance that would regulate all telecommunications service providers' use of City rights-of-way. To minimize the impact of the time that was needed for the City to develop such an ordinance and to address potential concerns of delay that Chibardun may have had, Chibardun was offered the opportunity to enter into a license agreement with the City.

13. The purpose of such a license agreement was to grant Chibardun a license to construct, maintain and operate its telecommunications network within City rights-of-way and to identify the terms and conditions under which such construction, operation and maintenance would take place. The purpose of such an agreement was also to protect the City's interests in managing its rights-of-way and to protect the health, welfare and safety of its residents. To assist the City in developing the specific terms for the license agreement, Mr. Vergin was asked for information about Chibardun's planned telecommunications system. This information was sought so that the City could learn who Chibardun was, what activities